



THE ATTORNEY GENERAL OF TEXAS

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September 13, 1972

Honorable Clayton T. Garrison
Executive Director
Texas Parks and Wildlife Department
John H. Reagan Building
Austin, Texas 78701

Opinion No. M-1215

Re: Whether the Parks and Wildlife Department is authorized to purchase liability insurance after September 1, 1972, under Article 6252-19a, V.C.S., in view of the rider in S. B. No. 1, Acts of 62nd Legislature, Third Called Session, 1972, Sec. 60, page V-54, and related question?

Dear Mr. Garrison:

You have requested an opinion from this office asking the following specific questions:

"1. Is the Parks and Wildlife Department authorized to purchase liability insurance after September 1, 1972, under the provisions of Article 6252-19a, in light of the rider in S. B. No. 1, Acts of the 62nd Legislature, Third Called Session, 1972, at Section 60 page V-54?

"2. In the event you find the Department is authorized to purchase liability insurance for its employees while driving state vehicles, what specific funds may the Department use to make this purchase?"

In answering your first question we would note that the Texas Tort Claims Act, Article 6252-19, Vernon's Civil Statutes, generally authorizes a governmental unit to purchase liability insurance to cover its operations. However, in S. B. 1 (Acts 62nd Leg., 3rd C.S., 1972, sec. 60, p. V-54) the General Appropriation Bill forbids the expenditure of appropriated funds for the purchase of liability insurance to cover tort claims which arise under the Tort Claims Act.

Because of the limitation found in S. B. 1, any authorization for the purchase of such insurance must be found in Article 6252-19a, Vernon's Civil Statutes, which is quoted, in part, as follows:

"Section 1. The State Departments or Agencies who own and operate motor vehicles, aircraft and motorboats or watercraft of all types and sizes shall have the authority to insure their officers and employees from liability arising out of the use, operation and maintenance of such automobiles, trucks, tractors, power equipment, aircraft and motorboats or watercraft used or which may be used in the operation of such Department or Agency. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

"Section 2. * * *

"Section 3. * * *

"Section 4. Such payments are to be charged against the maintenance fund of the department for which such employee is employed."

In regard to your first question, we are of the opinion that the Parks and Wildlife Department is authorized to purchase liability insurance after September 1, 1972, under the provisions of Article 6252-19a, since the limitation contained in the General Appropriation Bill applies to insurance coverage purchased under the provisions of Article 6252-19.

In answer to your second question, you are advised that payment for such insurance coverage may come out of Item 9 of the appropriation to the Parks and Wildlife Department, which includes operating expenses (Article III-108) as provided by Section 4 of Article 6252-19a, quoted above.

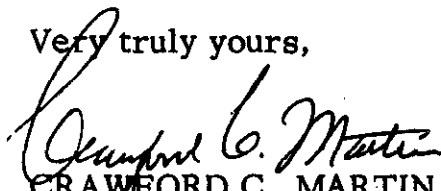
We have heretofore noted the distinction between appropriations for claims arising under the Texas Tort Claims Act and those arising under Article 6252-19a, a separate and distinct statutory authorization. See Attorney General Opinion Nos. M-501 (1969), M-536 (1969) and M-559 (1970).

SUMMARY

The Parks and Wildlife Department may purchase liability insurance for its officers and employees under the authority of Article 6252-19a, V. C. S.

The Parks and Wildlife Department may use funds out of the Department's "maintenance fund" to purchase this insurance as provided in Article 6252-19a, V. C. S.

Very truly yours,


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